

Testimony of
The Honorable Patrick Leahy

July 18, 2002

OPENING STATEMENT OF SENATOR PATRICK LEAHY, CHAIRMAN,
SENATE JUDICIARY COMMITTEE EXECUTIVE BUSINESS MEETING
ON THE LEAHY-SPECTER-FEINSTEIN-BIDEN-DURBIN-EDWARDS
SUBSTITUTE AMENDMENT TO S.486,
THE INNOCENCE PROTECTION ACT
July 18, 2002

Today this Committee continues its work on the Leahy-Specter-Feinstein-Biden-Durbin-Edwards substitute version of S.486, the Innocence Protection Act. I said last week that our bill is not a cure-all for the criminal justice system, or even for the capital punishment system, but it is a very good bill.

It reflects careful thought, and principled compromise, concerning the key reforms necessary to protect the innocent, and about the needs of law enforcement and States' rights to help restore justice and confidence in our criminal justice system. I will include in the record a few of the recent editorials and letters we have received in support of the bill.

I am especially grateful to all the Members of the Committee who have worked with me on this effort. Senator Feingold is an original cosponsor of S.486, and a powerful voice in the national debate on capital punishment. Senators Kennedy, Durbin, Cantwell, and Edwards are also cosponsors of S.486. Senator Feinstein has worked with me for the past year to find common ground on DNA and counsel provisions that would enable us to move forward together. Senator Specter brought his experience as a prosecutor to bear in crafting a bill that complements the Innocence Protection Act; several of his proposals have been incorporated in the substitute amendment. We also benefitted from Senator Biden's vast experience in the criminal justice system, and I welcome his cosponsorship of the substitute amendment.

I would like to see if we can make progress and report it today. With the cooperation of all members of the Committee, I think that we can. I want to thank Senator Hatch for the way he handled his opposition and the debate last week. I asked my staff to reach out to his staff again this week to see whether we might find a way for him to support this effort and this bill.

Likewise, I had my staff reach out to the other Republican members of the Committee who had filed amendments to see what could be done with regard to their concerns.

I believe that I am correct in reporting progress and want to begin today's session by offering a multi-part amendment that incorporates a number of points on which we have been able to reach an accommodation.

This amendment, which we have we have worked out with Senators Sessions and Kyl does the following:

First, the amendment includes compromise language to address the issue that Senator Kyl raised last week. Specifically, it sets out certain factors that the Attorney General should take into consideration when deciding whether to award a grant to a capital defender organizations.

I do not believe that this language is necessary, and I am concerned that it could be used to deny grants to organizations that are particularly effective on behalf of their clients. However, we have included language that will facilitate oversight by this Committee, as well as other protections. All in all, I believe it is a workable compromise.

Second, at Senator Sessions' request, the amendment requires that when a court orders DNA testing, the results of such tests are simultaneously disclosed to the defense, prosecution, and the court of jurisdiction. The Senator from Alabama and I agree that DNA test results - whether they are obtained by the prosecution or the defense - should be shared immediately with the other side.

Third, again at Senator Sessions' request, we have added a provision that will encourage States to take the initiative on DNA testing by reviewing their capital cases, identifying those in which biological evidence is readily accessible and DNA testing is appropriate, and then going ahead and doing the testing. We have also authorized the U.S. Attorney General to do post-conviction DNA testing as appropriate in federal capital cases.

This new provision contemplates that such prosecutor-initiated DNA testing would occur within one year, but nothing in what we have added to the bill precludes testing in appropriate cases after that period.

Fourth, the amendment authorizes new grant programs to train State and local prosecutors, defense counsel, and judges to better handle capital cases. This would supplement the program already in the bill to assist States in strengthening their indigent defense systems in capital cases.

Fifth and finally, we have clarified language that was already in the substitute which prohibits defender organizations that receive federal grants under our new program from using the money for political activities.

This principle is already firmly established in federal law, but we have made it crystal clear in the text of the bill. We have also clarified that grantees may use grant funds to respond to requests from Congress and State legislatures regarding their activities under the grant.

Again, I want to thank all of the members of this Committee for their constructive input on the bill.

I thank Senator Sessions, for working with me over the last several days on this compromise amendment, and I am glad we were able to accommodate his concerns. I understand that he may still oppose the bill, but I hope that we can continue this dialogue as the legislative process moves forward.

I am informed that the language has been circulated and has been cleared on both sides. Accordingly, I offer this amendment in the belief that we can make significant progress by accepting it and I urge its adoption.

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